IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ petition NO. 1514 of 2005

La Grande Projects Limited Pvt. Ltd. .. ... Petitioners

vs.

Union of India & ors. . ... Respondents

Mr. Shyam Mehta i/b. Bagla Dandekar & Co., for Petitioners
Mr. R. V. Desai with Suresh Kumar for Respondents.

CORAM: **S. RADHAKRISHNAN**
AND
A. S. AGUIAR JJ.

Date: 13/6/2005

P.C.

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

   Rule. Rule made returnable forthwith. Learned counsel for the Respondent waives service. By consent taken up for hearing.

2. In the above petition the Petitioners had cleared certain goods from the Customs authorities. While clearing the said goods the Petitioners have paid redemption fine of Rs.1.25 crores. At that time the Commissioner of Customs I, Mumbai by his order dated 18th

December 1996 had also imposed penalty of Rs.5 lacs on the Petitioners, in addition to the aforesaid redemption fine of Rs.1.25 crores. It appears that the Petitioners had already cleared the goods after payment of requisite duty and redemption fine and penalty of Rs.5 lacs. It further appears that four appeals were filed from the aforesaid order, three by the Respondents and one by the Petitioners. In the appeals filed by the Respondents the department has sought enhancement of penalty before the CESTAT. The Tribunal by its order dated 9/10 January 2002 had enhanced the penalty from Rs.5 lacs to Rs.1 crore. The Petitioners, when the order was passed on 10th January 2002, appears to have been not represented properly as the order itself mentions in the title "appellant -unrepresented". In the body of the said order it is stated that one lady advocate had appeared but however, she had no instructions. The order also indicates that CESTAT directed her to argue the matter. However, she declined to argue as she had no instructions.

3. It is the case of the Petitioners that the Petitioners had not engaged the said lady advocate whereas they had engaged one Mr. V. M. Doiphode, Advocate, who had not yet filed the vakalatnama, though

he was engaged by the Petitioners and as such the Petitioners were badly prejudiced. It is the case of the Petitioners that the Petitioners were not even informed of the aforesaid order dated 10th January 2002 whereby the Tribunal had enhanced the penalty from Rs.5 lacs to Rs.1 crore. The Petitioners have alleged that the Petitioners came to know of the said order for the first time only on 1st September 2004 when the Deputy Commissioner of Customs sent a communication enclosing the Tribunal's order. It is the case of the Petitioners that the Petitioners were totally unaware of the said order and that immediately on receipt of the said order on 1st September 2004 they filed an application before the CESTAT seeking restoration of the above appeal. The Tribunal by its order dated 11.3.2005 had declined to restore the above appeal mainly on the ground that the Petitioners were represented by an advocate on the earlier occasion and also that the earlier advocate must have informed the Petitioners about the order dated 5.8.2002. The order dated 10th January 2002 was dispatched only on 5th August 2002. The said order also makes it abundantly clear that when the order dated 5th August 2002 was passed the advocate had refused to argue on the ground that there was no instructions from her client.

4. Learned counsel appearing for the Petitioners submitted that the Petitioners were not afforded with a fair and reasonable opportunity of being heard and pursuing the aforesaid appeal. It is the contention of the learned counsel for the Petitioners that the aforesaid miscellaneous application ought to have been allowed and the original appeal ought to have been restored and heard on merits.
5. Mr. Desai learned counsel for Respondents also does not dispute that when the above order dated 10th January 2002 was passed no one had argued on behalf of the Petitioners and that the lady advocate present had declined to argue for want of proper instructions from the client.
6. As far as the delay is concerned we do not find any reason why the Petitioners would have wilfully delayed in filing restoration application. In fact the order of CESTAT proceeds on a presumption that the earlier advocate must have informed the Petitioners about the order dated 10th January 2002. Obviously, had the Petitioners come to know on 10th January 2002 about the passing of the said order then they would have immediately moved for modification of the same; whereas the Petitioners have stated that they came to know of the said order only on receipt of the communication from the

Commissioner of Customs only on 1st September 2004/

7. Having regard to all the aforesaid facts and circumstances as the Petitioners were not afforded a fair and reasonable opportunity of personal hearing by the CESTAT , especially on merits with regard to enhancement of penalty of Rs.5 lacs to Rs.1 crore in the larger interest of justice we quash and set aside the said order dated 10th January 2002, which was on 5th August 2002. We also quash and set aside the order dated 11th March 2005 whereby the Tribunal had declined to entertain the Miscellaneous Application for restoration of the aforesaid appeal. We do hereby restore all the above four appeals viz. C 330 /97. Bom & C/ 9, 10, 11/98 Bom., subject to the pre- condition that the Petitioners shall deposit Rs.10,000/- as costs, condition precedent with the Respondents within a period of two weeks. Upon such deposit being made CESTAT shall hear the aforesaid appeals strictly on its own merits, in accordance with law. Writ petition stands disposed of accordingly.

S. RADHAKRISHNAN J.

A. S. AGUIAR J.